

STATEMENT OF SENATOR SAM BROWNBACK
SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
HEARING ON S.2902, THE BROADBAND INTERNET REGULATORY RELIEF ACT
JULY 26, 2000

THE COMMITTEE WILL COME TO ORDER. THE COMMITTEE TODAY WILL HEAR TESTIMONY ON S. 2902, THE BROADBAND INTERNET REGULATORY RELIEF ACT OF 2000. THE LEGISLATION WOULD ELIMINATE UNNECESSARY REGULATIONS THAT CURRENTLY INHIBIT THE DEPLOYMENT OF BROADBAND SERVICES IN RURAL AND OTHER AREAS.

BROADBAND SERVICES HAVE THE POTENTIAL TO DRAMATICALLY CHANGE THE WAY WE COMMUNICATE, LEARN, OBTAIN MEDICAL TREATMENT, SHOP, AND ENTERTAIN OURSELVES. AS MUCH CHANGE AS THE INTERNET IN ITSELF HAS WROUGHT ON OUR SOCIETY, HAVING HIGH-SPEED ACCESS TO THE WEB INCREASES THE TYPES OF APPLICATIONS THAT CAN BE PROVIDED OVER THE INTERNET.

THE POSSIBILITIES ARE LIMITLESS. BUT BEFORE THEY CAN BE REALIZED, WE NEED TO ENSURE THAT ALL AMERICANS, WHETHER THEY LIVE IN URBAN OR RURAL AREAS, WHETHER THEY LIVE IN FLAT OR MOUNTAINOUS AREAS, OR WHETHER THEY LIVE ON THE COASTS OR ON THE GREAT PLAINS, HAVE ACCESS TO BROADBAND SERVICES.

THE PROBLEM IS THAT, WHILE BROADBAND SERVICES ARE BEING DEPLOYED AT AN INCREASINGLY RAPID PACE, THEY ARE NOT BEING DEPLOYED IN RURAL AND OTHER HIGH-COST/LOW-PROFIT AREAS. A RECENT STUDY CONDUCTED BY NTIA AND THE RUS FOUND THAT "DEPLOYMENT IN URBAN AND RURAL AREAS IS NOT PROCEEDING AT A COMPARABLE PACE.... THE MAJOR CABLE AND DSL PROVIDERS ARE BOTH CONCENTRATING ON SERVING METROPOLITAN URBAN AREAS WITH HIGH POPULATION DENSITIES.... RESIDENTS IN RURAL AREAS WILL GENERALLY BE THE LAST TO RECEIVE SERVICE." IN ADDITION, A RECENT SANFORD BERNSTEIN/MCKINSEY STUDY FOUND THAT "MANY OF THE CABLE UPGRADES TO DATE APPEAR TO BE TARGETED AT THE MOST ATTRACTIVE NEIGHBORHOODS (I.E., HIGH DENSITIES AND HIGH HOUSEHOLD INCOMES)."

THE NTIA/RUS STUDY DETERMINED THAT BROADBAND IS MUCH LESS LIKELY TO BE AVAILABLE IN SMALL TOWNS THAN IT IS IN LARGE CITIES. FOR EXAMPLE, ACCORDING TO ONE SURVEY, MORE THAN 73 PERCENT OF CITIES WITH POPULATIONS OF 500,000 TO ONE MILLION HAVE CABLE-MODEM AND/OR DSL SERVICE, BUT LESS THAN FIVE PERCENT OF TOWNS OF 5,000 TO 10,000 HAVE CABLE-MODEM SERVICE, AND LESS THAN TWO PERCENT OF SUCH TOWNS HAVE

DSL SERVICE. AND ALL OF THE CITIES SURVEYED THAT HAD POPULATIONS GREATER THAN 1 MILLION HAD BOTH CABLE-MODEM AND DSL SERVICE, WHILE LESS THAN 2 TENTHS OF ONE PERCENT OF TOWNS OF LESS THAN 1,000 PEOPLE HAD EITHER CABLE-MODEM OR DSL.

THE NTIA/RUS STUDY FOUND A PLAUSIBLE EXPLANATION FOR THIS DISPARITY: "THE COSTS OF HIGH-SPEED CABLE DATA DEPLOYMENT AND OPERATION IN RURAL AREAS ARE HIGH," AND "BECAUSE THE SUBSCRIBER BASE IN RURAL AREAS IS MORE DISPERSED THAN IN MORE DENSELY POPULATED AREAS, THERE IS LESS ECONOMIC INCENTIVE TO CONNECT RURAL AREAS."

SOME MEMBERS OF THE COMPETITIVE COMMUNITY ARGUE THAT COMPETITION WILL DRIVE BROADBAND DEPLOYMENT INTO RURAL AREAS. THAT IS SIMPLY NOT THE CASE. AS THE NTIA/RUS STUDY FOUND, "THERE IS LITTLE EVIDENCE, TO DATE, THAT COMPETITION AMONG WIRE-BASED AND TERRESTRIAL WIRELESS-BASED SYSTEMS HAS PROMOTED NEAR-TERM DEPLOYMENT OF ADVANCED SERVICES IN RURAL AREAS OUTSIDE OF TOWNS."

IN ADDITION, THE SANFORD BERNSTEIN/MCKINSEY STUDY FOUND THAT "WIRELESS WILL NOT BE A FACTOR IN THE RESIDENTIAL BROADBAND MARKET UNTIL AT LEAST 2002." THE BERNSTEIN/MCKINSEY REPORT FURTHER STATED THAT FIXED WIRELESS "WILL PRIMARILY ADDRESS RESIDENTIAL CUSTOMERS IN MARKETS AND AREAS WHERE ADVANTAGEOUS CLIMATES AND TOPOGRAPHIES PERMIT 'FILLING IN' HOLES THAT CABLE AND DSL FIND LESS ECONOMICAL TO SERVE."

COMPETITION WILL THEREFORE NOT DRIVE BROADBAND DEPLOYMENT IN RURAL AREAS. THE ECONOMICS OF BROADBAND DEPLOYMENT IN RURAL AREAS SIMPLY DO NOT FACILITATE THE TYPE OF COMPETITION THAT WE CURRENTLY ARE WITNESSING IN URBAN AND DENSELY-POPULATED SUBURBAN AREAS.

AS A RESULT, CONGRESS NEEDS TO PROVIDE AN INCENTIVE TO COMPANIES TO DEPLOY BROADBAND SERVICES IN RURAL AREAS. SOME SENATORS HAVE PROPOSED SUBSIDIES TO FACILITATE DEPLOYMENT; OTHERS HAVE PROPOSED TAX INCENTIVES. BUT BEFORE WE EXPLORE EITHER OF THOSE AVENUES, CONGRESS NEEDS TO TAKE A LOOK AT HOW WE REGULATE COMPANIES WHEN THEY PROVIDE BROADBAND SERVICES. BY ELIMINATING UNNECESSARY REGULATIONS, WE CAN PROVIDE THE PROPER INCENTIVES FOR COMPANIES TO MAKE BROADBAND AS UBIQUITOUS AS THE TELEPHONE.

AS EVEN FCC CHAIRMAN BILL KENNARD HAS ACKNOWLEDGED, BROADBAND IS A NASCENT MARKET IN WHICH NO COMPANY OR PARTICULAR TECHNOLOGY IS DOMINANT. IF NO COMPANY/TECHNOLOGY IS DOMINANT, THEN NO CARRIER SHOULD BE REGULATED LIKE A DOMINANT CARRIER WHEN

IT OFFERS BROADBAND SERVICES. THE INCUMBENT RULES OF SECTION 251(C) OF THE ACT SHOULD CONTINUE TO APPLY TO TELEPHONY AND THE OLD PARTS OF THE TELEPHONE NETWORK. BUT WHEN IT COMES TO NEW BROADBAND SERVICES AND NEW PIECES OF THE NETWORK, THE INCUMBENT LOCAL EXCHANGE CARRIERS (ILECS) SHOULD BE SUBJECT TO NO MORE REGULATION THAN ANY OTHER COMPANY.

THE CURRENT DISPARITY IN REGULATORY TREATMENT IS MOST STRIKING WITH RESPECT TO CABLE COMPANIES, WHICH HAVE A COMPARABLE CUSTOMER BASE AS ILECS YET ARE ALMOST COMPLETELY UNREGULATED WITH RESPECT TO HIGH-SPEED CABLE-MODEM SERVICE. ACCORDING TO THE BERNSTEIN/MCKINSEY STUDY, "UNLIKE THE TELCOS, WHICH ARE REGULATED AS COMMON CARRIERS, CABLE CURRENTLY SUFFERS NEITHER INTERCONNECTION NOR UNBUNDLING NOR MANDATORY RESALE OBLIGATIONS.... [U]NDER THE STATUS QUO, CABLE HAS THUS ENJOYED A BENEFIT - NAMELY, FREEDOM FROM REGULATION - RELATIVE TO THE TELCOS ON HIGH-SPEED SERVICES."

REGULATORY PARITY WOULD PROVIDE THE ILECS WITH THE SAME ECONOMIC INCENTIVE TO INVEST IN NEW SERVICES, TECHNOLOGY, AND EQUIPMENT AS ANY OTHER BROADBAND PROVIDER. ILECS COULD AGGRESSIVELY DEPLOY NEW EQUIPMENT AND OFFER NEW SERVICES WITHOUT ENABLING THEIR COMPETITORS TO BORROW THE ILECS' FACILITIES TO STEAL THE ILECS' CUSTOMERS. ILECS WOULD RECOVER THEIR COSTS AS QUICKLY AS THE MARKET PERMITTED.

THE BROADBAND INTERNET REGULATORY RELIEF ACT WOULD DO THE FOLLOWING:

- ! THE LARGE ILECS WOULD BE REQUIRED TO PROVIDE ADVANCED SERVICES TO 80 PERCENT OF THEIR SERVICEABLE CUSTOMERS WITHIN 3 YEARS AND TO 100 PERCENT OF SUCH CUSTOMERS WITHIN 5 YEARS.
- ! ILECS WOULD NO LONGER BE SUBJECT TO STRICTER REGULATORY REQUIREMENTS THAT DO NOT CURRENTLY APPLY TO CABLE COMPANIES OR CLECS FOR THE PROVISION OF ADVANCED SERVICES.
- ! THE ILECS WOULD NOT BE SUBJECT TO THE INTERCONNECTION OR UNBUNDLING REQUIREMENTS OF SECTION 251(C) FOR ALL PACKET-BASED EQUIPMENT AND FIBER LOOPS DEPLOYED TO RESIDENCES.
- ! AN ILEC WOULD CONTINUE TO HAVE TO PROVIDE NON-PACKET-BASED ELEMENTS ON AN UNBUNDLED BASIS, AND WOULD HAVE THE SAME INTERCONNECTION REQUIREMENTS AS ANY OTHER CARRIER.

- ! THE ILECS WOULD NO LONGER BE SUBJECT TO THE RESALE REQUIREMENTS OF SECTION 251(C) FOR THE PROVISION OF ADVANCED SERVICES, BUT WOULD HAVE THE SAME RESALE REQUIREMENTS AS ANY OTHER CARRIER.
- ! AN ILEC'S ADVANCED SERVICES WOULD NOT BE SUBJECT TO PRICE REGULATION IN AREAS IN WHICH THE ILEC FACES COMPETITION, AND SUCH REGULATION WOULD BE STREAMLINED IN MARKETS IN WHICH AN ILEC IS THE SOLE PROVIDER OF ADVANCED SERVICES.
- ! IN ORDER TO ENABLE CLECS TO OFFER ADVANCED SERVICES TO CONSUMERS WHO CAN ONLY BE REACHED THROUGH REMOTE TERMINALS, THE ILECS WOULD HAVE SUBLOOP UNBUNDLING AND CROSS-CONNECT REQUIREMENTS SO THAT CLECS WOULD BE ABLE TO OFFER ADVANCED SERVICES USING THEIR OWN REMOTE TERMINALS BUILT ADJACENT TO AN ILEC'S FACILITIES.
- ! AN ILEC WILL LOSE ITS REGULATORY RELIEF IF IT FAILS TO COMPLY WITH THE FCC'S COLLOCATION RULES AND THE FCC/STATES' LOOP PROVISIONING RULES.
- ! AND, FINALLY, TELECOMMUNICATIONS TRAFFIC TO THE INTERNET WOULD NO LONGER BE SUBJECT TO RECIPROCAL COMPENSATION ARRANGEMENTS.

AS THE NTIA/RUS STUDY DEMONSTRATES, SENATORS FROM RURAL STATES SHOULD NOT BE OVERLY WORRIED ABOUT WHETHER COMPETITION EXISTS FOR THE PROVISION OF BROADBAND SERVICES IN RURAL AREAS. RURAL-STATE SENATORS SHOULD BE WORRIED ABOUT WHEN EVEN ONE BROADBAND PROVIDER WILL OFFER ADVANCED SERVICES TO CONSUMERS WHO LIVE IN RURAL AREAS.

VERY FEW COMPANIES WOULD EVER ENTER A NEW MARKET BY SERVING LESS-PROFITABLE AREAS FIRST. BUT, WITH THE RIGHT INCENTIVES, THE ILECS COULD BE POISED TO ENTER THE BROADBAND MARKET IN RURAL AREAS YEARS BEFORE CABLE COMPANIES AND CLECS, AND PREVENT THOUSANDS OF RURAL COMMUNITIES FROM BEING DENIED HIGH-SPEED ACCESS TO THE INTERNET. THE BROADBAND INTERNET REGULATORY RELIEF ACT PROVIDES SUCH INCENTIVES, AND I HOPE THAT MY COLLEAGUES WILL GIVE IT THEIR CONSIDERATION.